

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JAMES SANDERS,

Plaintiff,

vs.

THE TRANSIT AUTHORITY OF  
THE CITY OF OMAHA D/B/A  
METRO AREA TRANSIT, a  
Nebraska corporation,

Defendant.

8:16-CV-454

ORDER

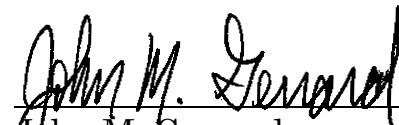
This matter is before the Court on the defendant's motion for attorneys' fees under 42 U.S.C. § 2000e-5(k). [Filing 45](#). That statute authorizes an award of attorneys' fees and expenses to a prevailing defendant in a discrimination suit under Title VII of the Civil Rights Act of 1964. And because the defendant was a "prevailing party" in this case, *see* [filing 43](#), it seeks \$34,801.50 in "fair and reasonable" costs and fees. *See* [filing 47 at 5](#).

The defendant's motion will be denied. Attorneys' fees and expenses are justified under § 2000e-5(k) when the plaintiff's case is "frivolous, unreasonable, or without foundation." *E.E.O.C. v. CRST Van Expedited, Inc.*, 679 F.3d 657, 694 (8th Cir. 2012). But courts are to "avoid hindsight logic that equates frivolousness with the plaintiff's ultimate failure to prevail." *E.E.O.C. v. Kenneth Balk & Assocs., Inc.*, 813 F.2d 197, 198 (8th Cir. 1987). Stated another way, so long as the plaintiff has "some basis" for the discrimination claim, a prevailing defendant may not recover attorneys' fees. *Id.* And the plaintiff's complaint in this case, while ultimately unsuccessful, was far from baseless. Accordingly,

IT IS ORDERED that the defendant's motion for attorneys' fees  
([filing 45](#)) is denied.

Dated this 9th day of March, 2018.

BY THE COURT:

  
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John M. Gerrard  
United States District Judge